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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

|                           |   |                        |
|---------------------------|---|------------------------|
| In re                     | } | Case No. 10-19825-B-12 |
| Francisco L. Parreira and |   | DC No. WW-12           |
| Maria I. Parreira,        |   |                        |
| Debtors.                  |   |                        |

**MEMORANDUM DECISION REGARDING OBJECTION  
TO LEGAL FEES AND PROOF OF CLAIM**

This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (*see* Fed. R. App. P. 32.1), it has no precedential value. *See* 9th Cir. B.A.P. R. 8013-1.

Riley C. Walter, Esq., of Walter & Wilhelm Law Group, appeared on behalf of the debtors, Francisco L. Parreira and Maria I. Parreira.

Craig B. Fry, Esq., of Lang, Richert & Patch, appeared on behalf of Fresno-Madera Production Credit Association.

In this contested matter, the parties have asked the court to determine the amount of legal fees that can be recovered by Fresno-Madera Production Credit Association ("PCA") for work performed in connection with this bankruptcy case. PCA is a fully secured creditor and is entitled by contract to recover reasonable attorney's fees as part of its claim. PCA has filed an amended proof of claim requesting attorney's fees incurred through February 10, 2011, in the

1 amount of \$53,384.50.<sup>1</sup> The court deems the Debtors' objection to those fees to  
2 also be an objection to PCA's amended claim. Based upon a prior stipulation of  
3 the parties, only \$23,300 of PCA's attorney's fees, those for legal services  
4 performed after September 30, 2010, are now in dispute. For the reasons stated  
5 below, the Debtors' objection will be overruled. PCA's legal fees will be  
6 allowed in full.

7 This memorandum contains the court's findings of fact and conclusions of  
8 law required by Federal Rule of Civil Procedure 52(a), made applicable to this  
9 contested matter by Federal Rule of Bankruptcy Procedure 7052. The bankruptcy  
10 court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C.  
11 § 1225<sup>2</sup> and General Orders 182 and 330 of the U.S. District Court for the  
12 Eastern District of California. This is a core proceeding as defined in 28 U.S.C.  
13 §§ 157(b)(2)(A) & (B).

14 **Background and Findings of Fact.**

15 This bankruptcy was filed under chapter 12 on August 26, 2010. The  
16 debtors, Francisco and Maria Parreira are dairymen (the "Debtors"). PCA is their  
17 largest secured creditor. On the petition date, PCA was owed approximately  
18 \$550,833.<sup>3</sup> The debt to PCA was secured by a first priority lien against the  
19 Debtors' personal property, including the dairy herd and the milk checks. Based  
20 on the Debtors' schedules, the dairy herd had a value of \$778,800 and the milk  
21 checks, including the retains, had a value of \$78,627. There is no dispute that the  
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23 <sup>1</sup>PCA's billing records are attached to its amended proof of claim filed on  
24 February 10, 2011. PCA did not request reimbursement of any hard costs.

25 <sup>2</sup>Unless otherwise indicated, all bankruptcy, chapter, code section and rule  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal  
27 Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated after  
October 17, 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

28 <sup>3</sup>This amount reflects principal and interest as reflected in PCA's first proof of  
claim filed on December 17, 2010. It does not include attorney's fees and does not  
reflect adjustments and credits agreed to by the parties in the plan confirmation process.

1 debt to PCA was fully secured by a substantial margin.

2 After extensive negotiations, in early October 2010, the Debtors and PCA  
3 entered into a written agreement entitled "Stipulation For Order Re Agreed  
4 Financing, Heifer Swap, Use of Collateral, Valuation of Collateral and Plan  
5 Treatment" (the "October Stipulation" - filed on October 19, 2010). It provided,  
6 *inter alia*, a comprehensive facility for the treatment of PCA's secured claim in a  
7 chapter 12 plan. The Debtors confirmed a consensual chapter 12 plan by order  
8 dated February 25, 2011 (the "Plan"). A copy of the October Stipulation was  
9 attached to and incorporated into the Plan to memorialize the treatment of PCA's  
10 claim.

11 At the time the Plan was confirmed, the parties could not agree on the  
12 amount of attorney's fees that PCA could recover as part of its claim. However,  
13 the parties did agree in the October Stipulation that the attorney's fees incurred  
14 by PCA through September 30, 2010, were reasonable in the amount of  
15 \$30,084.50. (October Stipulation, ¶5(B).) According to PCA's billing records,  
16 PCA's actual legal expenses through September 30, 2010, were \$30,084.50, the  
17 exact amount agreed to in the October Stipulation.

18 The billing records for PCA's legal fees are attached to PCA's amended  
19 proof of claim (the "Billing Records"). PCA incurred legal fees in connection  
20 with this bankruptcy case, from August 17, 2010, through February 10, 2011, in  
21 the amount of \$53,384.50, representing 179 hours of attorney and paralegal time.  
22 The amount of those fees for legal work performed after September 30, 2010, the  
23 fees in dispute here, is \$23,300, representing 78.1 hours of attorney and paralegal  
24 time (the "Disputed Fees"). Of that time, 15.1 hours at a cost of \$4,300, was  
25 devoted just to this fee dispute (see discussion below).

26 **Issue Presented.**

27 The Debtors initially objected to the total amount of PCA's fees on the  
28 grounds that the fees are excessive and unreasonable. While the Debtors do not

1 dispute PCA's right to procure any level of legal service it deems to be  
2 appropriate, they do dispute PCA's right to recover those fees from the Debtors  
3 to the extent that the level of legal service was unnecessary and unreasonable.  
4 However, at the oral argument, Debtors' counsel acknowledged that the Debtors  
5 are bound by the October Stipulation and are now precluded from objecting to  
6 PCA's legal fees incurred through September 30, 2010. The issue therefore is  
7 how much of PCA's post-September 30<sup>th</sup> legal fees, the Disputed Fees, should be  
8 awarded for inclusion in PCA's claim.

9 **Analysis and Conclusions of Law.**

10 **The Reasonable and Necessary Standard.** The Debtors contend that  
11 PCA's attorneys failed to exercise prudent billing judgment and essentially "over-  
12 lawyered" this case under the circumstances. Those circumstances include the  
13 facts that (1) PCA was significantly oversecured at all times by the dairy herd and  
14 the milk checks, and (2) the case was relatively straightforward and  
15 uncontroversial.<sup>4</sup> With regard to the first issue, there appears in retrospect to be  
16 no dispute that PCA was at all times well collateralized, even though the value of  
17 that collateral was always susceptible to decline. Resolution of the second issue  
18 is more difficult to address because the Debtors objected to PCA's entire claim  
19 for legal fees, not just the Disputed Fees, and because the Debtors offer few  
20 specifics for the court to rule on. Neither party presented a comprehensive "task"  
21 analysis to show how the Disputed Fees should be allocated to different  
22 categories of work.

23 When bankruptcy courts are asked to review the legal fees incurred by a  
24 professional person employed to work in a case under § 327, the process begins  
25 with reference to the Bankruptcy Code which offers a statutory framework for  
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27 <sup>4</sup>The Debtors also argue that PCA acted inequitably with regard to the handling  
28 of their loan, interrupted the flow of milk checks, and unnecessarily forced the Debtors  
to seek bankruptcy protection in the first place. That argument is not properly raised in  
the context of this post-confirmation dispute and has not been considered by the court.

1 analyzing the fees. The Code mandates that professional fees must be actual,  
 2 necessary and reasonable.<sup>5</sup> Here, PCA does not seek to recover its fees under  
 3 § 330 because its attorneys did not work for the bankruptcy estate. As the holder  
 4 of a fully secured claim, PCA seeks to recover its attorney's fees under the  
 5 authority of § 506(b).<sup>6</sup> Section 506(b) also incorporates the "reasonableness"

6  
 7 <sup>5</sup>Professional compensation for persons employed to work for the bankruptcy  
 estate is governed by § 330(a) which provides in pertinent part:

8 (a)(1) After notice to the parties in interest and the United States Trustee and a  
 9 hearing, . . . the court may award . . . a professional person employed under  
 section 327 or 1103—

10 (A) reasonable compensation for actual, necessary services rendered by  
 11 the . . . professional person, or attorney . . . ; and

12 (B) reimbursement for actual, necessary expenses.

13 (2) The court may, on its own motion or on the motion of . . . any other party in  
 14 interest, award compensation that is less than the amount of compensation that is  
 requested.

15 (3) In determining the amount of reasonable compensation to be awarded to . . .  
 16 [a] professional person, the court shall consider the nature, the extent, and the  
 value of such services, taking into account all relevant factors, including—

17 (A) the time spent on such services;

18 (B) the rates charged for such services;

19 (C) whether the services were necessary to the administration of, or  
 20 beneficial at the time at which the service was rendered toward the  
 completion of, a case under this title;

21 (D) whether the services were performed within a reasonable amount of  
 22 time commensurate with the complexity, importance, and nature of the  
 problem, issue, or task addressed;

23 (E) with respect to a professional person, whether the person is board  
 24 certified or otherwise has demonstrated skill and experience in the  
 bankruptcy field; and

25 (F) whether the compensation is reasonable based on the customary  
 26 compensation charged by comparably skilled practitioners in cases other  
 than cases under this title.

27 <sup>6</sup>11 U.S.C. § 506(b) provides:

28 To the extent that an allowed secured claim is secured by property the value of  
 which, after any recovery under subsection (c) of this section, is greater than the amount

1 test. In determining reasonableness under § 506(b), the bankruptcy court does  
2 not look to state law, but rather makes an independent evaluation under federal  
3 law. *See In re 268 Ltd.*, 789 F.2d 674, 676–77 (9th Cir. 1986). Because all  
4 professional fees awarded in a bankruptcy case are effectively paid from assets of  
5 the bankruptcy estate and because both Code sections use the term “reasonable,”  
6 the court may apply to its § 506(b) analysis the same principles and case law that  
7 govern the award of fees under § 330. *See In re Segovia* (unpublished), 2008 WL  
8 8462967 (9<sup>th</sup> Cir. BAP 2008).

9 The concept of reasonableness when applied to a body of legal work  
10 invokes a combination of objective and subjective inquiries. Objectively, the  
11 court must be persuaded that the legal work performed in a particular case was  
12 consistent with the kind of legal service which a similarly situated creditor might  
13 require. The court must also determine that the value of the legal services is  
14 consistent with the cost of similar legal services for similar work. Subjectively,  
15 the court must inquire whether the professionals exercised prudent billing  
16 judgment in the decisions that were made to engage the legal services, the way  
17 the work was assigned, and the manner in which it was actually performed. The  
18 Ninth Circuit B.A.P. discussed the “reasonableness” factor in this context,  
19 stating:

20 Reasonableness embodies a range of human conduct. The key  
21 determinant is whether the creditor incurred expenses and fees that  
22 fall within the scope of the fees provision in the agreement, and  
23 took the kinds of actions that similarly situated creditors might  
24 reasonably conclude should be taken, or whether such actions and  
25 fees were so clearly outside the range as to be deemed  
26 unreasonable. The bankruptcy court should inquire whether,  
27 considering all relevant factors including duplication, the creditor  
28 reasonably believed that the services employed were necessary to  
protect his interests in the debtor’s property.

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of such claim, there shall be allowed to the holder of such claim, interest on such claim,  
and any reasonable fees, costs, or charges provided for under the agreement or State  
statute under which such claim arose.

1 *In re Dalessio*, 74 B.R. 721, 723 (9th Cir. BAP 1987) (citing *In re Carey*, 8 B.R.  
2 1000, 1004 (Bankr. S.D. Cal. 1981)).

3 Under § 506(b), the court has broad discretion in determining the amount  
4 of attorney's fees and in reviewing the fees for potential abuse of right. *Dalessio*,  
5 74 B.R. at 724 (citing *In re Fitzsimmons*, 51 B.R. 600 (9th Cir. BAP 1985). An  
6 oversecured creditor has the burden of proving the reasonableness of its fee claim  
7 under § 506(b). *In re Atwood*, 293 B.R. 227, 233 (9th Cir. BAP 2003). If  
8 applying for attorney's fees under § 506(b), the "attorney . . . bears the burden of  
9 proving the reasonableness of those fees, which can only be done by presentation  
10 of carefully detailed applications and supporting documentation." *Dalessio*, 74  
11 B.R. at 724 (citing *In re Meade Land & Dev. Co.*, 577 F.2d 858, 860 (3d Cir.  
12 1978)).

13 The purpose of the reasonableness limitation of § 506(b) . . . is to prevent  
14 overreaching or collusive use of fee arrangements. A court should not  
15 reward a creditor whose overly aggressive attorney harasses and opposes  
16 the debtor at every stage of the bankruptcy proceeding, nor should an  
oversecured creditor be given a blank check to incur fees and costs which  
will automatically be reimbursed out of its collateral.

17 *Id.* at 723 (citation omitted).

18 **Valuing the Legal Services, the Lodestar Approach.** In the Ninth  
19 Circuit, the customary method for determining the reasonableness of attorney's  
20 fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359,  
21 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). Several courts have  
22 also applied the lodestar method in determining the reasonableness of fees  
23 requested under § 506(b). *See, e.g., In re Coy Farms, Inc.*, 417 B.R. 17, 22  
24 (Bankr. N.D. Ohio 2009); *In re Nixon*, 400 B.R. 27, 38 (Bankr. E.D. Pa. 2008); *In*  
25 *re 900 Corp.*, 327 B.R. 585, 593–94 (Bankr. N.D. Tex. 2005). *But see*  
26 *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 961  
27 (9th Cir. 1991) (concluding that bankruptcy court's use of alternative formula  
28 rather than lodestar method for § 506(b) purposes was not abuse of discretion).



1       “The ‘lodestar’ is calculated by multiplying the number of hours the  
2 prevailing party reasonably expended on the litigation by a reasonable hourly  
3 rate.” *Morales*, 96 F.3d at 363 (citation omitted). “This calculation provides an  
4 objective basis on which to make an initial estimate of the value of a lawyer’s  
5 services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation  
6 award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin.*  
7 *Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

8       In rare or exceptional instances, if the court determines that the lodestar  
9 figure is unreasonably low or high, it may adjust the figure upward or downward  
10 based on factors enumerated in *Kerr v. Screen Guild Extras, Inc.*, 526 F.2d 67  
11 (9th Cir. 1975). *Morales*, 96 F.3d at 363–64. The original *Kerr* factors include:

- 12       (1) the time and labor required,
- 13       (2) the novelty and difficulty of the questions involved,
- 14       (3) the skill requisite to perform the legal service properly,
- 15       (4) the preclusion of other employment by the attorney due to
- 16       acceptance of the case,
- 17       (5) the customary fee,
- 18       (6) whether the fee is fixed or contingent,
- 19       (7) time limitations imposed by the client or the circumstances,
- 20       (8) the amount involved and the results obtained,
- 21       (9) the experience, reputation, and ability of the attorneys,
- 22       (10) the “undesirability” of the case,
- 23       (11) the nature and length of the professional relationship with the
- 24       client, and
- 25       (12) awards in similar cases.

26 *Kerr*, 526 F.2d at 70 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714  
27 (5th Cir. 1974)).

28       However, some of the *Kerr* factors have been subsumed as a matter of law  
within the initial lodestar calculation and should be taken into account in either



1 the reasonable hours component or reasonable hourly rate component. *Morales*,  
2 96 F.3d at 363–64 & nn.8–9. These include (1) the novelty and complexity of the  
3 issues, *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 n.6 (9th Cir. 1987)  
4 (citing *Blum v. Stenson*, 465 U.S. 886, 898–900 (1984)); (2) the special skill and  
5 experience of counsel, *id.*; (3) the quality of representation, *id.*; (4) the results  
6 obtained, *id.*; and (5) the contingent nature of the fee agreement, *City of*  
7 *Burlington v. Dague*, 505 U.S. 557, 565–67 (1992). These subsumed factors may  
8 not act as independent bases for adjustments to the lodestar figure. *Miller v. Los*  
9 *Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987).

10         Given the two-step “lodestar” approach, the court has considerable  
11 discretion in determining the reasonableness of attorney’s fees. *Gates v.*  
12 *Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to  
13 have this discretion “in view of the [court’s] superior understanding of the  
14 litigation and the desirability of avoiding frequent appellate review of what  
15 essentially are factual matters.” *Hensley*, 461 U.S. at 437.

16         However, even with this discretion, “[i]t remains important . . . for the  
17 [court] to provide a concise but clear explanation of its reason for the fee award.”  
18 *Id.* Further, the court must “articulate with sufficient clarity the manner in which  
19 it makes its determination.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205,  
20 1211 (9th Cir. 1986) (citation omitted), *amended*, 808 F.2d 1373 (9th Cir. 1987).  
21 This does not require the court to include detailed calculations, but “something  
22 more than a bald, unsupported amount is necessary. While the [court] need not  
23 set forth in exhaustive detail the method of calculating an attorney’s fee award, at  
24 the very least [it] must set forth the number of hours compensated and the hourly  
25 rate applied.” *Id.* at 1211 n.3. When the fees awarded differ substantially from  
26 the fees requested, however, then an explanation as to how the court arrived at its  
27 figure is necessary. *Domingo v. New England Fish Co.*, 727 F.2d 1429, 1447  
28 (9th Cir. 1984), *modified*, 742 F.2d 520 (9th Cir. 1984).

1        **Application of the Lodestar to This Case.** The first step in the  
 2        “lodestar” process, the “reasonable hours” analysis, requires the court to  
 3        determine if the attorneys exercised prudent billing judgment in the performance  
 4        of their duties to the client. Prudent billing judgment is an essential part of the  
 5        lodestar analysis. Unless the court is satisfied that the attorneys were prudent and  
 6        made a good faith effort to perform their work efficiently, then the court cannot  
 7        apply the lodestar presumption to any of their fees. On the “billing judgment”  
 8        issue, the Supreme Court has commented,

9                The [court] . . . should exclude from this initial fee calculation  
 10                hours that were not “reasonably expended.” Cases may be  
 11                overstaffed, and the skill and experience of lawyers vary widely.  
 12                Counsel for the [party requesting attorney’s fees] should make a  
 13                good faith effort to exclude from a fee request hours that are  
 14                excessive, redundant, or otherwise unnecessary, just as a lawyer in  
 15                private practice ethically is obligated to exclude such hours from  
 16                his fee submission. In the private sector, “billing judgment” is an  
 17                important component in fee setting. It is no less important here.  
 18                Hours that are not properly billed to one’s *client* also are not  
 19                properly billed to one’s *adversary* pursuant to statutory authority.

20        *Hensley*, 461 U.S. at 434 (citations and internal quotation marks omitted,  
 21        emphasis in original).

22        It is not sufficient for the fee applicant to simply represent that all of the  
 23        time claimed was usefully spent, and the court should not uncritically accept  
 24        these representations. *Jordan*, 815 F.2d at 1263 n.8 (citation omitted). Instead,  
 25        the fee applicant must show that the time spent was reasonably necessary and that  
 26        counsel made a good faith effort to exclude excessive, redundant, or unnecessary  
 27        hours. *Id.* (citation omitted).

28        In this case, the court began its “reasonable hours” analysis of the  
 Disputed Fees by first reviewing the docket to assess the length and relative  
 complexity of the case. The court then looked to the Billing Records to  
 determine (1) what services PCA’s attorneys actually performed and (2) whether  
 they provided those services in a “prudent” manner. From the docket, this does  
 not appear to have been a difficult case. At the same time, the docket does not

1 suggest that PCA engaged in any frivolous or unnecessary legal antics. The  
2 bankruptcy was filed on August 26, 2010. The hearing at which the court  
3 approved the Debtors' Plan, with some modifications, was held 119 days later on  
4 December 22, 2010. By that time, the Debtors and PCA had essentially resolved  
5 their differences as reflected in the October Stipulation. On December 8, 2010,  
6 PCA filed a three-page "conditional" non-opposition to confirmation of the Plan.  
7 Even though the Plan included the October Stipulation, PCA's conditional non-  
8 opposition sought to address several provisions that PCA felt were unclear or  
9 ambiguous in the Plan. The complete docket in this case, from the filing of the  
10 petition to the date of the hearing on this objection includes 181 entries. The  
11 number of docket entries after September 30, 2010, is 103. Other than the  
12 conditional non-opposition referred to above, nothing from PCA appears on the  
13 docket after September 30, 2010, until the pleadings it filed in response to this  
14 objection. There were no motions for relief from the automatic stay or contested  
15 matters that required an evidentiary hearing.

16 A review of the Billing Records reveals the "rest of the story," the  
17 activities that are not readily apparent from the docket. Billing entries after  
18 September 30, 2010, reflect a significant amount of activity related to, *inter alia*,  
19 completion of the October Stipulation, negotiation and editing of the Plan, editing  
20 of the proposed confirmation order, preparation of PCA's proof of claim, and this  
21 fee objection. The Debtors argue that some of this effort was extraordinary, but  
22 both sides point to the other as the cause of any "unnecessary" work. The trial  
23 court, with only the Billing Records and its personal understanding of the case,  
24 cannot assign "fault" for allegedly excessive fees incurred in the Plan  
25 confirmation process without, at a minimum, an evidentiary hearing. The cost of  
26 further litigation over the Disputed Fees would certainly be counter productive  
27 and would not justify any possible benefit which might flow therefrom.

28 The Billing Records do not suggest that PCA's attorneys engaged in any

1 legal activities after September 30, 2010, that were not reasonably focused on the  
2 achievement of a common goal, confirmation of a successful reorganization Plan  
3 for the Debtors' dairy operation. As this court has observed of other creditors in  
4 similar cases, PCA did not prosecute unnecessary objections to the use of cash  
5 collateral, it did not seek to shut down the dairy operation through prosecution of  
6 a stay relief motion, and it did not seek to leverage its bargaining position by  
7 interjecting inappropriate threats to the Debtors' discharge.

8 Finally, the Billing Records do not suggest that PCA's attorneys ignored  
9 their duty to act prudently. All of the time was billed in 1/10 hour increments.  
10 Virtually all of the Disputed Fees were generated by two attorneys, René  
11 Lastreto, II, Esq., and Craig B. Fry, Esq. While Mr. Lastreto assumed an  
12 oversight and review roll, most of the work was delegated to Mr. Fry, who  
13 carried the laboring oar at a significantly lower billing rate (\$300 per hour). The  
14 attorneys' billing strategy after September 30, 2010, does not appear to be any  
15 different from the billing strategy employed before that date and the Debtors have  
16 already stipulated that those fees were reasonable. There was virtually no  
17 duplication of effort. The few inter-office conferences were relatively short in  
18 duration. Many of the entries for inter-office conferences were billed at "no-  
19 charge." Many of the "conferences" were billed by only one attorney with no  
20 corresponding billing entry from the other participants.

21 The Debtors object to the fact that PCA's attorneys spent 15.1 hours, at a  
22 cost of \$4,300 (by the Debtors' calculation), devoted to this fee dispute. The  
23 Debtors do not detail which specific billing entries warrant scrutiny, so the court  
24 cannot respond to this objection except in general terms. The Debtors instigated  
25 this fee dispute after PCA declined to reduce its fees to an amount offered by the  
26 Debtors. It would be completely arbitrary for this court to simply decree how  
27 much the defense of a dispute should cost. As stated above, PCA's attorneys did  
28 exercise prudent billing judgment in their handling of the case. As a general rule,

1 the professional time spent in the presentation of a fee application is necessary  
2 and reasonable and eligible for compensation from the estate. *See generally In re*  
3 *Nucorp Energy, Inc.*, 764 F.2d 655 (9th Cir. 1985) (fees incurred by debtor's  
4 counsel for preparation of its fee application in compliance with § 329(a) and  
5 Fed. R. Bankr. P. 2016 is compensable under § 330).

6 The Debtors rely heavily on the language in the *Dalessio* decision to  
7 support their request for reduction of PCA's legal fees. While the general  
8 principles stated in *Dalessio* are sound, the case itself is distinguishable on its  
9 egregious facts. The creditor in *Dalessio* was substantially oversecured and  
10 adequately protected by an interest in real property. *Dalessio*, 74 B.R. at 723.  
11 The creditor ultimately recovered from a sale of the property the full amount of  
12 its principal, interest, prepetition late charges and advances to the holder of the  
13 senior lien. *Id.* The attorney's fees at issue were fees the creditor incurred to  
14 aggressively and unnecessarily prosecute an adversary proceeding for relief from  
15 the automatic stay and an objection to the debtor's disclosure statement. *Id.* at  
16 722. Based on the inherent nature of the collateral, and the level of adequate  
17 protection for the secured claim, the court held that all of the requested attorney's  
18 fees and costs may not be warranted under § 506(b) and remanded the matter to  
19 the bankruptcy court for further factual findings. *Id.* at 724.

20 Here, PCA's collateral consisted of dairy cows and milk checks, both of  
21 which are inherently perishable and easily subject to decline if not monitored and  
22 protected. Milk checks must be spent on operating expenses, some of which may  
23 not be appropriate. Dairy cows can be easily transported, sold or rendered  
24 useless if not properly fed and cared for. Unlike the real property secured  
25 mortgagee in *Dalessio*, PCA required the services of counsel to deal with cash  
26 collateral issues and transactions involving a partial sale of the dairy herd.  
27 Unlike *Dalessio*, PCA was not paid in full from liquidation of its collateral.  
28 Instead, it had to participate actively in the Plan confirmation process. The Plan

1 contemplates that PCA will be paid overtime, with revenues generated through  
2 ongoing operations of the dairy, and PCA must necessarily share some of the risk  
3 associated with that. By the inherent nature of PCA's collateral, it was not  
4 unreasonable that PCA took an active roll in this case. The 78.1 hours that  
5 comprise the Disputed Fees do not appear to be unreasonable and unnecessary  
6 under the circumstances. The court is persuaded that PCA's attorneys exercised  
7 prudent billing judgment in their handling of the case.

8 Turning now to the second "lodestar" factor, the court must determine if  
9 PCA's legal services were billed at a reasonable hourly rate. The "reasonable  
10 hourly rate" is determined by reference to the prevailing market rates in the  
11 relevant community. *Blum*, 465 U.S. at 895. The relevant community is  
12 generally the forum in which the court sits. *Barjon v. Dalton*, 132 F.3d 496, 500  
13 (9th Cir. 1997) (citation omitted). The court, however, may consider rates  
14 outside of the forum "if local counsel was unavailable, either because they are  
15 unwilling or unable to perform because they lack the degree of experience,  
16 expertise, or specialization required to handle properly the case." *Id.* (citation  
17 and internal quotation marks omitted). After defining the relevant community,  
18 the court determines the reasonable hourly rate in that community. The standard  
19 is the "rate prevailing in the community for similar work performed by attorneys  
20 of comparable skill, experience, and reputation." *Id.* at 502 (citation and internal  
21 quotation marks omitted).

22 The fee applicant has the burden of "produc[ing] satisfactory evidence—in  
23 addition to the attorney's own affidavits—that the requested rates are in line with  
24 those prevailing in the community for similar services by lawyers of reasonably  
25 comparable skill, experience and reputation." *Blum*, 465 U.S. at 895 n.11.  
26 Affidavits of the attorney and other attorneys regarding prevailing fees in the  
27 community, as well as rate determinations in other similar cases, are satisfactory  
28 evidence of the prevailing market rate. *United Steelworkers of Am. v. Phelps*

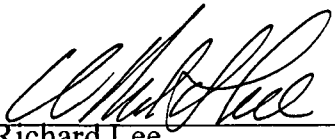
1 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

2 With regard to the hourly rates billed to PCA for its legal work, the court  
3 finds nothing unreasonable about this component of the lodestar. Neither party  
4 introduced any evidence of the prevailing rate for legal services in this  
5 community. At the same time, neither party has raised any objection to the  
6 hourly rates billed by the attorneys and paralegals on either side of this case. The  
7 court notes that the hourly rate of PCA's lead attorney (René Lastreto, II, Esq., at  
8 \$350 per hour) was substantially less than the hourly rate of the Debtors' lead  
9 attorney (Riley C. Walter, Esq., at \$395 per hour). This case is located in Central  
10 California, as are the law firms that performed all of the legal work for both the  
11 Debtors and PCA. Both law firms employ competent experienced attorneys who  
12 regularly appear in this court representing similar clients in similar kinds of cases.  
13 The hourly rates billed by the professionals on both sides of this case appear to be  
14 in line with the level of skill required in this kind of case and the customary fee  
15 for comparable legal service in this community.

16 **Conclusion.**

17 Based on the foregoing, the court finds and concludes that the legal fees  
18 incurred by PCA after September 30, 2010, were necessary and reasonable under  
19 the circumstances. Accordingly, PCA's fees will be allowed in full as reflected  
20 in its amended proof of claim. The Debtors' objection will be overruled. PCA  
21 shall submit an appropriate order.

22 Dated: December 23, 2011

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24  
25   
26 W. Richard Lee  
27 United States Bankruptcy Judge  
28



Francisco & Maria Parreira, Case No. 10-19825-B-12/DC No. WW-12

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